HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

Writ Petition No. 6753 of 2006

Between:

G.A.V.G. Vasantha Lakshmi .. Petitioner

AND

The District Judge, Rajahmundry,

East Godavari District. ..Respondents

::JUDGMENT::

Counsel for the petitioner: Shri Satish Deshpande

Counsel for the Respondents: Smt.M. Bhaskara Lakshmi

Dated: April , 2006

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Per G.S.Singhvi, C.J.

This is a petition for quashing order dated 27-4-2005 vide which District Judge, East Godavari at Rajahmundry, (respondent No.1) terminated the petitioner's service from the post of Attender.

The facts:

In response to notification dated 18-3-2004 issued by respondent No.1, the petitioner, who belongs to Scheduled Tribe, applied for recruitment as Attender. She was selected by the competent authority and was appointed as Attender, vide order dated 29-11-2004 issued by respondent No.1. She joined duty on 8-12-2004. After one month and 16 days, respondent No.1 passed order dated 24-1-2005 whereby he terminated the petitioner's service by way of removal. However, on a consideration of representations dated 8-2-2005 and 10-2-2005 made by the

petitioener, in which she expressed regret for her absence from duty, respondent No.1 passed order dated 24-2-2005 for her re-induction in service. The second stint of the petitioner's service did not last long because, on receipt of adverse report sent by Additional Judicial Magistrate of First Class, Razole, respondent No.1 again removed her from service, vide his order dated 27-4-2005.

The petitioner has challenged the second order mainly on the ground of violation of the rules of natural justice. She has also pleaded that the impugned order is punitive in character and is liable to be nullified because respondent No.1 did not hold any enquiry and did not give her opportunity of defence in respect of the allegations of misconduct enumerated therein.

In the counter-affidavit filed by Samudrala Govindarajulu, Principal District Judge, East Godavari at Rajahmundry, it has been averred that the petitioner was appointed on a purely temporary basis and her service was terminated because her work was consistently found unsatisfactory. In paragraphs 4 and 5 of his affidavit, Sri Govinda Rajulu has given detailed reasons which appear to have prompted the then District Judge to terminate the petitioner's service first vide order dated 24-1-2005 and then by the impugned order.

We have heard learned counsel for the parties and perused the record. It is settled law that a person who is appointed on temporary basis does not acquire the right to hold the post and his service can be terminated on the ground of unsatisfactory work or conduct. It is equally well-settled that action taken by the employer to terminate the services of a temporary employee can be invalidated by the Court if it is shown that the impugned action is founded on the allegations of misconduct or is otherwise stigmatic. In appropriate cases, the Court can also lift the veil and determine the true character of the action taken by the employer to terminate the services of a temporary employee – **Parshotam Lal Dhingra v. Union of India**, **State of Bihar v. Shiva Bhikshuk Misra**, **Shamsher Singh v. State of Punjab**, **Anoop Jaiswal v. Government of India and another**, **Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd.**, **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta**, **V.P. Ahuja v. State of Punjab**, **Chandra Prakash Shahi v. State of U.P.**.

If the order under challenge is scrutinized in the light of the ratio of the aforementioned judgments, there is no escape from the conclusion that the same is

punitive in character and is liable to be quashed on the ground of violation of the rules of natural justice because it is an undisputed position that respondent No.1 did not hold any enquiry and did not give opportunity to the petitioner to controvert the allegations of misconduct.

We have no doubt in our mind that if respondent No.1 had terminated the petitioner's service by an innocuous order without making a reference to the acts of misconduct, this Court would have been extremely loath to entertain her challenge to that action. However, the fact of the matter is that order dated 24-1-2005 and the impugned order are loaded with serious allegations of misconduct. The very tenor of the impugned order shows that respondent No.1 intended to take punitive action against the petitioner. Else, there was no reason for him to use the following expression:

> "PROCEEDINGS BEFORE THE DISCIPLINARY AUTHORITY-CUM-DISTRICT JUDGE, EAST GODAVARI, RAJAHMUNDRY"

In unnumbered paragraphs 2, 3, 4, 5, 6, 7 and 8 of the impugned order, respondent No.1 referred to the various delinquencies committed by the petitioner and then recorded his conclusion in the following words:

> "From the report, it is clear that the Attender is adamant, arrogant and irresponsible. Her conduct while on duty is reprehensible. If she is continued in service any longer, it may lead to widespread insubordination among other staff members. Hence, she deserves to be removed from service at once."

The above reproduced conclusion leaves no manner of doubt that respondent No.1 wanted to punish the petitioner for the acts of misconduct and insubordination. This, he could do only after holding an enquiry in accordance with the provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, which respondent No.1 admittedly had not done so. Therefore, the petitioner's case squarely falls within the parameters of the ratio of the Supreme Court judgments in **Dipthi Prakash Banerjee**'s case (supra), **V.P. Ahuja**'s case (supra) and **Chandra Prakash Shahi**'s case (supra).

In the result, the writ petition is allowed. Order dated
27-4-2005 passed by respondent No.1 is quashed. As a consequence, the petitioner shall be reinstated in service. However, she shall not be entitled to backwages because, by the time of termination of service, because she had worked hardly for

few days.

It is also made clear that the competent authority shall be free to take disciplinary action against the petitioner and pass appropriate order in accordance with law.

G.S.SINGHVI, C.J.

G.BHAVANI PRASAD, J.

25th April, 2006

svs